

From: DGregorio@waterboards.ca.gov
Sent: Wednesday, October 25, 2006 1:18 PM
To: Amy Boone
Cc: evanwfox@gmail.com; MLPACComments@resources.ca.gov; Bruce Fujimoto; Emily S Siegel
Subject: MLPACComments: RE: Fed-state report

Amy

I'm sorry if I missed the official comment period deadline. I put together some comments as follows, I hope these will still be of use to you:

Thank you for the opportunity to comment on the MLPA Initiative's Draft Report on Improving Coordination among State and Federal Agencies with MPA Responsibilities. The draft is very comprehensive and well written. It does a good job of portraying the diversity of agency responsibilities and the complex interactions between each of the agencies' roles.

I have one major comment. On page 32, Recommendation 1 suggests establishing a "Federal-Ocean Protection Council Working Group," composed of the OPC Steering Committee and federal representatives, and consistent with the establishment of the State Interagency Coordinating Committee as required in PRC 36800.

As background, AB 2800 added section 36800 to the PRC, which called for the Secretary of Resources to create the State Interagency Coordinating Committee with members representing the Department of Fish and Game, Department of Parks and Recreation, California Coastal Commission, State Water Resources Control Board, and State Lands Commission. Frank Palmer was the State Water Board's original representative and I replaced Frank when he retired, toward the end of the Committee's original work. During that period the State Interagency Coordinating Committee successfully renamed the Marine Managed Areas (MMAs), including various Marine Protected Areas (MPAs) and Areas of Special Biological Significance, a subset of the State Water Quality Protection Areas. The State Fish and Game Commission adopted these name changes for the MPAs. Similarly, the State Water Board (Resolution No. 2005-0035) incorporated a definition of State Water Quality Protection Areas, and the changes to the ! names of specific ASBS, in our 2005 Ocean Plan, to be consistent with the PRC and the Interagency Coordinating Committee.

I assume that under your recommendation the Federal-Ocean Protection Council Working Group would resume the work of the Interagency Coordinating Committee, which has been inactive since 2004. You suggest membership to be the Executive Director of the State Water Board. However, the State Water Board's current member of the OPC Steering Committee is our Vice-chair, Gerald Secundy. Therefore one suggestion is to avoid being too prescriptive with regard to the exact membership of the Working Group.

Regardless of who is the official representative, the reality is that high-level representatives, such as directors and Board members, will not be able to devote the required amount of time needed to provide the extensive coordination that it might be envisioned. Instead, executive level representatives will need to rely on the expertise and work of staff to provide the necessary substance for the type of inter-agency collaboration that was performed with the original staff-level AB 2800 Interagency Coordinating Committee.

The following are some additional comments providing clarifications and minor corrections to other portions of the document related to water quality issues.

Page 12

* Wording should be changed: "SWRCB has authority to create state

water quality protection areas and including areas of special biological significance*"

Page 104-105, Section 28

* The SWRCB should be included under the Agency/Org. column. Regional Water Boards are responsible for issuing the majority of the permits and enforcement actions. However the State Water Board is responsible for issuing certain statewide NPDES permits (e.g., for certain groups of storm water dischargers) and occasionally has even issued NPDES permits for individual dischargers of waste to surface waters (e.g., as a result of the petition process).

* It should be noted that CWA 301(h) waivers are issued by the USEPA.

Page 109, Section 36

It should be noted that the California Ocean Plan is the water quality control plan for the ocean waters of the State, and is composed of water quality standards that include beneficial uses and water quality objectives, and a program of implementation. You should also be aware that the State Water Board has a State Implementation Policy (SIP, State Water Board Resolution No. 2005-0019) for the California Toxics Rule (CTR, promulgated by US EPA). The SIP is applicable in enclosed bays and estuaries as well as fresh water bodies. Like the Ocean Plan, the CTR contains water quality criteria, and in the central coast region this would apply to enclosed bays such as Moro Bay and Moss Landing Harbor as examples.

See <http://www.waterboards.ca.gov/plnspols/oplans.html> and <http://www.waterboards.ca.gov/iswp/index.html>

Page 126, Section 63

The Bay Protection and Toxic Cleanup Program (BPTC) originally focused on the identification and assessment of toxic hot spots in bays and estuaries. The BPTC program now focuses primarily on the development of sediment quality objectives (SQOs). When adopted (Phase I planned for December 2007), SQOs will be used to determine if beneficial uses are impaired, at risk, or protected from sediment quality related degradation. The SQOs will also be useful for monitoring sediment cleanups, restoration, and the effectiveness of Total Maximum Daily Loads (TMDLs) or Best Management Practices (BMPs). For more information on sediment quality objectives visit:

<http://www.waterboards.ca.gov/bptcp/sediment.html>

Page 126-127, Section 64

* Should change heading: "California Nonpoint Source Plan Program."

* Should remove the following the phrase at the end of this sentence: "Rather than develop a separate coastal nonpoint source program, the State of California chose to address the requirements through a revision and expansion of the statewide nonpoint source plan required under CWA section 319, which relied exclusively on voluntary measures."

* Should change: "The lead agencies have identified NPS control

measures, known as 'best management practices management measures and management practices,' to address polluted runoff related to urban areas, forestry, agriculture, marinas, hydromodification, and wetlands."

Page 130-131, Section 68

* The names of the ASBS should be updated per 2005 California Ocean Plan: The ASBS located in the Central Coast Region are: Ano Nuevo, Point Lobos, San Miguel, Santa Rosa, and Santa Cruz Islands, Julia Pfeiffer Burns, Pacific Grove, Salmon Creek Coast, and Carmel Bay.

* Wording should be changed: "Discharges to ASBSs persist despite the prohibition, so legislation in recent years has prioritized the use of state pollution clean up grant funds for sources of to address waste discharges to these areas."

Page 148, Section 91

* Wording should be changed: "Under CWA section 401, every applicant for a federal permit or license for any activity which may result in a discharge to state waters any discharge into waters of the U.S. must *"

Page 153, Section 98

* Wording should be changed to read as: "Such discharges may occur only when there is no practical alternative that is less damaging to the aquatic environment."

* The following should also be added: "Stricter protections are afforded to 'special aquatic sites' (40 CFR 230-233) such as wetlands."

* Wording should be changed: "EPA can veto a USACE permit decision if EPA's environmental guidelines for discharges are not met determines that the discharge would have unacceptable adverse environmental effects."

Page 154, Section 99

* It should be noted that waste discharge requirements for the discharge of dredge or fill material into state waters is not under federal jurisdiction.

Sincerely,

Dominic Gregorio, Senior Environmental Scientist
Ocean Unit, Division of Water Quality
State Water Resources Control Board
916-341-5488
DGregorio@waterboards.ca.gov